

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOSEPH R. ERNST,

Plaintiff,

v.

CIVIL NO. 3:11-cv-625

**EXPERIAN INFORMATION SOLUTIONS, INC.,
TRANS UNION, LLC, WACHOVIA MORTGAGE,
a Division of WELLS FARGO BANK, N.A.,**

Defendants.

**MEMORANDUM IN SUPPORT OF MOTION FOR
MODIFICATION OF SCHEDULING ORDER**

Comes now the Plaintiff, by counsel, and with the consent of Wachovia Mortgage/Wells Fargo Bank, N.A., moves the court for a modification of the court's scheduling order so that the Plaintiff may have adequate time to identify experts to testify at trial. Plaintiff requests the deadline for its expert disclosures be enlarged until January 24, 2012, to accommodate the possibility the case will be settled at the January 20, 2012, Settlement Conference currently set with Hon. Dennis W. Dohnal. The Plaintiff respectfully requests a proportionate enlargement for the Defendants to identify their experts, to be February 24, 2012, or such as schedule as the Court deems just and proper.

Under the scheduling order entered on December 2, 2011, the parties are required to identify experts in compliance with Local Rule 26(d)(2), which provides that Plaintiff is to disclose witnesses who will provide expert testimony "not later than sixty (60) days before the earlier of the date set for completion of discovery or for the final pretrial conference." The trial is set to be March 27, 2012, without a final pretrial conference.

Therefore, the date for the mandatory disclosure of expert witnesses must be calculated from the date of discovery completion 55 days prior to trial, which is February 1, 2012. Motions for summary judgment are due 50 days prior to trial, or February 5, 2012. The application of the Local Rule requires that Plaintiff would have had to disclose its experts on December 1, 2011, which was the date of the initial pretrial conference and one day prior to the entry of the scheduling order. In this case, the operation of the Local Rules provided no time for the Plaintiff to identify his experts. No party will suffer any prejudice as a result of the requested enlargement and the trial date shall remain unaffected. Only ten days have passed since entry of the scheduling order, discovery has just commenced, and the parties are actively engaged discovery and litigating the case. Precluding the Plaintiff's ability to identify expert witnesses to testify would not serve the ends of justice.

A modification of the Court's Scheduling Order regarding expert disclosures will also likely require a modification of the date motions for summary judgment shall be filed to allow for both parties to rely on the expert evidence that is both material and not in dispute.

Therefore, the Plaintiff respectfully requests that the court grant his motion to modify the scheduling order and enlarge the time in which the parties must identify expert witnesses and other deadlines as the court deems proper.

JOSEPH R. ERNST

/s/

Susan M. Rotkis
VSB 40693
Attorney for Plaintiff
CONSUMER LITIGATION ASSOC., P.C.
763 J. Clyde Morris Boulevard, Suite 1-A

Newport News, Virginia 23601
(757) 930-3660 - Telephone
(757) 930-3662 – Facsimile
srotkis@clalegal.com

Leonard A. Bennett, Esq.
VSB #37523
Attorney for Plaintiff
CONSUMER LITIGATION
ASSOCIATES, P.C.
763 J. Clyde Morris Boulevard, Suite 1-A
Newport News, Virginia 23601
(757) 930-3660 - Telephone
(757) 930-3662 – Facsimile
lenbennett@cox.net

Kristi Cahoon Kelly, VSB #72791
SUROVELL ISAACS PETERSEN &
LEVY PLC
4010 University Drive, 2nd Floor
Fairfax, VA 22030
Telephone (703) 277-9774
Facsimile (703) 591-9285
kkelly@sipfirm.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

David Neal Anthony
Troutman Sanders LLP
Troutman Sanders Bldg
1001 Haxall Point
PO Box 1122
Richmond, VA 23219
Email: david.anthony@troutmansanders.com

Timothy James St. George
Troutman Sanders LLP

Troutman Sanders Bldg
1001 Haxall Point
PO Box 1122
Richmond, VA 23219
Email: tim.stgeorge@troutmansanders.com

Paul Lee Myers
Strasburger & Price, LLP
2801 Network Boulevard
Suite 600
Frisco, TX 75034
Email: paul.myers@straasburger.com

Attorneys for Experian Information Solutions, Inc.

Grant Edward Kronenberg
Morris & Morris PC
11 South 12th Street
5th Floor
PO Box 30
Richmond, VA 23218
Email: ekronenberg@morrismorris.com

Attorneys for Trans Union, LLC

Hunter Wilmer Sims, Jr.
Kaufman & Canoles PC
150 W Main St
PO Box 3037
Norfolk, VA 23510
Email: hwsims@kaufcan.com

Terry Catherine Frank
Kaufman & Canoles PC (Richmond)
1021 E Cary St Suite 1400
Two James Center
PO Box 27828
Richmond, VA 23261
Email: tcfrank@kaufcan.com

Attorneys for Wachovia

/s/
Susan M. Rotkis

VSB 40693
Attorney for Plaintiff
CONSUMER LITIGATION ASSOC., P.C.
763 J. Clyde Morris Boulevard, Suite 1-A
Newport News, Virginia 23601